In the High Court of Punjab and Haryana, Chandigarh

CWP No. 11007 of 2006
Date of Decision : 6.12.2007

Jaskaran Singh

.....Petitioner

Versus

State of Punjab & anr.

..... Respondent

Coram:- Hon'ble Mr. Justice J.S. Khehar
Hon'ble Mr. Justice Sham Sunder

Present :- Mr. Rajiv Atma Ram, Sr. Advocate with
Ms. Sunita, Advocate
for the petitioner

Mr. K.S. Dadwal, Addl. A.G. Punjab
for respondent Nos. 1 and 2

J.S. Khehar, J. (Oral)

The petitioner was appointed as Temporary Engineer in the respondent department in April 1977. For onward promotion from the post of Temporary Engineer to the post of Executive Engineer, 8 years experience is a prerequisite. It is, therefore, apparent that the petitioner acquired eligibility for promotion to the post of Executive Engineer in the year 1985. The petitioner was granted current duty charge of the post of Executive Engineer vide order dated 7.11.1997 (Annexure P-1). It is the contention of the learned counsel for the petitioner that when the petitioner was granted current duty charge, regular vacancies in the cadre of Executive Engineer were available. The petitioner was eligible and his record of service was satisfactory, in as much as, no adverse remarks had ever been communicated to the petitioner and as such the petitioner was liable to be promoted to the post of Executive Engineer. The first contention of the

learned counsel for the petitioner therefore is that the claim of the petitioner be considered for regular promotion to the post of Executive Engineer with effect from 7.11.97 i.e. the date when the petitioner was originally granted current duty charge for the said post.

The petitioner was eventually promoted on regular basis as an Executive Engineer vide order dated 31.5.2001. The Punjab Irrigation Department (Group A) Services Rules, 2004 (hereinafter referred to as 2004 Rules) provide for the method of appointment, qualifications and experience, etc. for promotion within the service i.e. even for promotion to the post of Superintending Engineer Rule 5 of 2004 Rules lays down that the eligibility for onward promotion would be as specified in "Appendix B" of the 2004 Rules. The post of Superintending Engineer figures at Serial No. 2 of "Appendix B" of the 2004 Rules wherein the following eligibility conditions have been stipulated for promotion to the post of Superintending Engineer:-

> "From amongst the Executive engineer who possess a degree in Engineering in any line from a recognized university or institution and who have an experience of working as such for a minimum period of six years."

It is the vehement contention of the learned Counsel for the petitioner that the petitioner fulfills the prescribed eligibility conditions for promotion to the post of Superintending Engineer, in as much as, the petitioner holds a degree in engineering and also possesses the experiences of working against the post of Executive Engineer for a period of more than 6 years. Coupled with eligibility, it is the contention of the learned counsel for the petitioner that vacancies in the cadre of Superintending

Engineer are available, and as such, the claim of petitioner should be considered for regular promotion. It is also pointed out that during the pendency of the instant writ petition, the petitioner has been granted current duty charge against the post of Superintending Engineer by an order dated 19.5.2006.

In order to repudiate the claim of the petitioner learned counsel for the respondents has placed vehement reliance on the decision rendered in ***P. Tulsi Das and Ors. Versus Govt. of A.P. and Ors. 2003(1) Service Cases Today 1.*** Reliance has been placed by the learned counsel for the petitioner specifically on the following observations recorded therein :-

> "13. So far as the claim of the benefits under the automatic advancement scheme formulated in GOMS No. 164, Finance and Planing Department, dated Ist June, 1982 is concerned we are unable to agree with the stand for the appellants that any service rendered could entitle the appellants or the class of persons similarly placed, to claim the benefit of the automatic advancement scheme. It is well settled that a person holding a lesser grade of post can be made to be incharge of a higher post and be paid also the scales of pay permissible for the higher grade or category of post put that will not make the said person entitled to claim to be a regular member or incumbent of the post to claim consequential benefits for any advanced career or promotion as if he is a regular incumbent to the said post. Even any one of the appellant or the class of persons similarly situated when assert a claim for the benefits of the said scheme they will have to strictly comply with the requirement of the

> conditions stipulated therefor in the scheme and cannot by virtue of the services rendered in a post pursuant to the concession shown to appoint them in the higher category of posts with a limited purpose and object as the aim automatically become entitled to count such service for claiming the benefits under the special scheme."

The Court's attention has also been invited to cryptic note of the Department of Personnel which has been placed on record as Annexure R-2. The noted dated 9.12.2002 relied upon by the learned counsel for the respondent is being extracted hereunder :-

> "The Administrative Department is advised that no benefit of CDC should be given for regularization of officers in the next higher rank."

In so far as the first claim raised by the petitioner mainly for regular promotion to the post of Executive Engineer from 7.11.97 is concerned, we are of the view that regular vacancies in the cadre of Executive Engineer were available when petitioner was granted current duty charge against the said post on 7.11.97. The fact that respondents also desired to fill such vacancies stands substantiated by the fact that the petitioner was granted current duty charge of the said post with effect from 7.11.1997. In the afore-stated background rather than filling up the post on regular basis the respondents promoted the petitioner merely on current duty charge basis. In our view it was imperative for the respondents to have conducted a regular process for selection so as to fill up the posts on regular basis specially in view of the fact that the petitioner was eligible for promotion as Executive Engineer and his record of service as Temporary

Engineer (which was relevant for promotion to the post of Executive Engineer) was unblemished. We therefore direct the respondent to consider the claim of the petitioner for regular promotion w.e.f. 7.11.97 in accordance with law and statutory rules prevalent in respect of the post of Executive Engineer.

The claim of the petitioner for regular promotion to the post of Superintending Engineer has been declined by asserting that he was ineligible for promotion as Superintending Engineer. It is the assertion of the learned counsel for the respondents that the services rendered by the petitioner after 31.5.2001 i.e. that date when the petitioner was promoted as Executive Engineer on regular basis could only have been taken into consideration to ascertain his eligibility. The relevant statutory rules regulating promotion to the post of Superintending Engineer extracted hereinabove clearly require "An experience of working as such for a minimum period of 6 years" under the rules requirement of "experience" against the post of Executive Engineer can not be equated with the requirement of "service on regular basis" as Executive Engineer. In this behalf learned counsel for the petitioner has invited the Court's attention to the decision rendered by the Supreme Court in ***Dr. Asim Kumar Bose vs. Union of India AIR 1983 Supreme Court 509.*** Pointed reliance has been placed on paragraph 29 which is recorded therein which is being reproduced here-under :-

> "29. It is necessary to emphasis that the recruitment rules nowhere provide that the teaching experience gained by a specialist in a teaching hospital in the capacity of an Associate Professor (ex-officio) shall not count towards the requisite

> teaching experience. There is no provision made in the Rules that the teaching experience must be gained on a regular appointment. There is hardly any difference so far as teaching experience is concerned whether it is acquired on regular appointment or as Specialist in a teaching hospital with the ex-officio designation. As the statutory rules do not provide that the teaching experience gained in a ex-officio capacity shall not count towards the requisite teaching experience, the teaching experience gained by the appellant while holding the post of Radiologist-cum-Associate Professor of Radiology (ex-officio) in the Irwin Hospital cannot be ignored in determining his eligibility for appointment as Professor of Radiology in Maulana Azad Medical College."

We are satisfied that for determination of eligibility of the petitioner for promotion to the post of Superintending Engineer the "experience" earned by him while working as Executive Engineer with effect from 7.11.1997 has be taken into consideration. Thus, the petitioner acquired eligibility on completion of 6 years 'experience' as Executive Engineer for promotion to the post of Superintending Engineer in 2003. Since vacancies in the rank of Superintending Engineer are stated to be available, as is apparent from the fact that the petitioner himself was allowed current duty charge against the post of Superintending Engineer with effect from 19.5.2006 and since the respondents also required the same to be manned, which is also obvious from the fact that the petitioner was given current duty charge as such with effect from 19.5.2006. We are of the view that the respondents were liable to fill up the available vacancies in the

rank of Superintending Engineer on regular basis, in consonance with 2004 Rules. Accordingly, were hereby direct the respondents to fill up the available vacant posts of Superintending Engineers within three months from the date of receipt of certified copy of the order. In the aforesaid consideration the claim of the petitioner be also considered by treating him as eligible for promotion (to the post of superintending Engineer).

Disposed of accordingly. In case the petitioner is allowed regular promotion to the post of Executive Engineer and/or Superintending Engineer, the petitioner will also be entitled to all consequential benefits.

(J.S.Khehar)
Judge

(Sham Sunder)
Judge

December 6, 2007
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